

Physicians and surgeons are primarily engaged in professions that render services. To the extent they are engaged in such professions and are not engaged in the business of selling tangible personal property to purchasers for use or consumption, they are not required to report and remit Retailers' Occupation Tax measured by their receipts from engaging in such professions. See 86 Ill. Adm. Code 130.2020. (This is a GIL).

April 1, 2002

Dear Xxxxx:

This is in response to your letter dated January 21, 2002 in which you request a Private Letter Ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

I am a dermatologist who uses injected collagen to correct scars and wrinkles. Injectable collagen is a natural product derived either from human skin or cow skin, and purified for injection into the human body. I have treated patients with both products. This treatment offers temporary improvement, lasting for several months, and is usually used for cosmetic reasons. However, if collagen is injected to treat *perleche* (wrinkles around the corners of the mouth which become infected), insurance, including Medicare, will many times pay for this reconstructive injection.

For many years, the only manufacturers of NAME collagen, charged no Illinois tax. Then, I was informed by COMPANY that Illinois tax of 2% was due, as collagen was considered to be in the class of artificial knee joints, and therefore subject to a new tax. As of November, 2001, I was told that a tax of 8.75% was due, as if I were selling this product. I objected, but was told by 'PERSON' at ABC Company, that she had checked with the Illinois Department of Revenue, and that this new tax was needed. When I inject cortisone to soften up scars, I do not have to pay a tax to Illinois to purchase this product. And when I purchase injectable collagen produced from humans, rather than cows, I am charged no Illinois tax by that company.

I was further told by the Illinois Department of Revenue on my initial telephone consultations that whether or not the tax was due Illinois, that they had no records of a COMPANY, XYZ Corporation, or ABC ever paying anything to the Illinois Department of Revenue, although I have paid them thousands of dollars over the last twenty years, not to mention all of the other dermatologists and plastic surgeons in Illinois who use the product. So, it seems, everybody is being cheated, including you.

The offending company selling NAME collagen is ABC, BBB, using the address of ###. If there is any reward given for turning in these persons, I would accept it.

All gross receipts from the sale of tangible personal property are subject to Retailers' Occupation Tax unless specifically exempted. A reduction from the regular sales tax rate of 6.25% is allowed for medicines and medical appliances. Qualifying medicines and medical appliances are taxed at the lower rate of 1%, plus applicable local taxes. See the enclosed copy of 86 Ill. Adm. Code 130.310.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. See Section 130.310(c)(1).

A medical appliance is defined as an item intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. Examples of items that qualify are artificial limbs, dental prostheses, and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines. Corrective medical appliances such as hearing aids, eyeglasses and contact lenses are also examples of qualifying items. Generally, medical tools, devices and equipment used for diagnostic, rehabilitative and treatment purposes do not qualify for the reduced rate of tax for medical appliances as such items, while being used for the treatment of patients, are not directly substituting for a malfunctioning part of the body. See Section 130.310(c)(2).

From the limited information provided in your letter it would appear that the collagen injections used for the treatment of your dermatology patients do not qualify as medical appliances, as they are not intended for use in directly substituting for a malfunctioning part of the body. Rather, such injections are used for temporary cosmetic improvements of the skin. It is unclear from your letter how such injections are used for the treatment of perleche, or wrinkles that become infected. Therefore, I cannot make a determination whether the collagen injections are considered a medicine or drug, subject to the low rate of tax. If the collagen injections are intended by the manufacturer for human use and are purported to have medicinal qualities, then such product may qualify for the 1% tax rate, plus applicable local taxes.

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The fact that physicians and surgeons are not subject to Retailers' Occupation Tax on the sale of tangible personal property transferred incident to the rendering of services does not mean, however, that such professionals are not liable for remitting any sales tax on the sale of such property. The Service Occupation Tax Act is imposed upon the tangible personal property transferred as an incident of the sale of service. See the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax. Therefore, when a dermatologist transfers tangible personal property to a patient incident to his rendering dermatological services, such as when collagen injections are administered to the patient, the dermatologist will be subject to the Service Occupation Tax, rather than the Retailers' Occupation Tax.

The purchase of tangible personal property that is transferred to service customers incident to the sale of service will result in a sales tax liability, either in the form of Service Occupation Tax liability or Use Tax Liability for the serviceman, depending upon which tax base the serviceman chooses to calculate his liability. Servicemen may calculate their tax base in one of four ways: (1)

separately stated selling price; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on his cost price if he is a registered de minimis serviceman; or (4) Use Tax on his cost price if he is an unregistered de minimis serviceman.

Thus, the sales of tangible personal property made incident to the services you render in your dermatology practice are subject to sales tax, whether that be at the regular 6.25% sales tax rate, plus applicable local taxes or at the reduced 1% rate, plus applicable taxes. If you choose to remit Service Occupation Tax on such sales using any of the first three methods listed above (i.e. separately stated selling price, 50% of the entire bill to your service customers, or as a registered de minimis serviceman, on the cost price of the tangible personal property transferred), then you may present a Certificate of Resale to your supplier and the transaction between you and your supplier will be nontaxable, as the sale is considered a sale for resale and the tax is imposed when the sale of tangible personal property incident to the sale of service is made. If, however, you choose to calculate your tax liability under the fourth method, as a non-registered de minimis serviceman, you must pay Use Tax to your supplier on the cost price of the items to be transferred with service. Unregistered de minimis servicemen cannot claim the transaction as a sale for resale, and therefore, the transaction is taxable and the supplier must collect the Use Tax.

Your concerns with regard to whether your suppliers are properly remitting sales tax to the Illinois Department of Revenue will be referred, along with a copy of your letter, to the Department's Audit Bureau to determine if the case merits further investigation.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 2 Ill. Adm. Code 1200.110(b), which can be obtained from the Department Web site.

Sincerely,

Dana Deen Kinion
Associate Counsel

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Enc.